IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Criminal Appeal No. 1331 of 2001 Decided on: July 15, 2006
(Old No. 1411/1988)
WITH
Criminal Jail Appeal No. 2069 of 2001

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 15.07.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1331 of 2001
(Old No. 1411 of 1988)

1. Ganesh Bhandari alias Ganesh Singh
   S/o Lachman Singh
   R/o Village Chamkat, Patti Idwalsun,
   P.S. & District Pauri Garhwal.

2. Gabar Singh

3. Devi Singh

4. Bhajan Singh
   All three S/o Sri Govind Singh Kathait,
   R/o Village Bindi Gern, Patti Chanras,
   P.S. Kirti Nagar, Tehri Garhwal.

……. Appellants

Versus

The State ……. Respondent

ALONG WITH

Criminal Jail Appeal No. 2069 of 2001
(Old No. 940 of 1991)

Bhajan Singh, S/o Govind Singh Kathait,
R/o Village Bindi Gern, Patti Chanras,
P.S. Kirti Nagar, Tehri Garhwal.

……. Appellant

Versus

The State …… Respondent

Mr. Lokendra Dobhal and Mr. Paresh Tripathi, Advocates for the appellants.
Mr. D.K. Sharma, Government Advocate with Mr. H.C. Pande, Addl. Government Advocate for the respondent-State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dt: July 15, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

These two appeals, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), are directed against the same judgment and order dated 31.05.1988, passed in Sessions Trial No. 20 of 1986, by the then learned Sessions Judge, Tehri Garhwal, whereby accused / appellant Bhajan Singh has been convicted under Section 302 of the Indian Penal Code, 1860, (for brevity hereinafter I.P.C.), and accused / appellants Gabar Singh, Devi Singh and Ganesh Bhandari, have been convicted under Section 302 read with Section 34 of the I.P.C., and each one of the four accused / appellants have been sentenced to imprisonment for life.

2) We heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that in the intervening night of 3rd and 4th of April, 1986, informant Ramesh Lal (P. W. 1) was sleeping in one of the rooms of his house. His father Shankar Lal (deceased) was in the another room on the first floor, with his wife Dasi Devi (P.W. 3) and their minor son Prajapati. A kerosene lamp (DHIBRI) was burning in that room. In the adjacent room, on the first floor, Dinesh Lal (P.W.2), brother of the informant, was

sleeping. The other members of the family were sleeping in other rooms. The doors of the room were open as it was Summer season. At about 01:00 A.M., on hearing the sound of footsteps, P.W. 1, Ramesh Lal and P.W. 2, Dinesh Lal woke up. Simultaneously, their Uncle Bichchu Lal also woke up and took up his torch and they saw through the door that accused / appellants Bhajan Singh and Gabar Singh, armed with muzzle loading guns, along with accused / appellant Devi Singh and Ganesh Bhandari were coming towards their house. Accused / appellant Devi Singh was flashing a torch. They went towards the room of informant's father. Accused / appellant Bhajan Singh had enmity with the family of Shankar Lal (deceased) as he lost a litigation between them relating to a water channel. On reaching at the door of the room of Shankar Lal (deceased), accused / appellants Devi Singh and Ganesh Bhandari exhorted the accused / appellants, armed with guns, to kill Shankar Lal, as he had indulged in litigation against them. Meanwhile, P.W. 3, Dasi Devi, who was in the same room with Shankar Lal, also got up. Accused / appellant Bhajan Singh fired on the head of Shankar Lal, leaving him dead on the spot. Accused / appellant Gabar Singh, on this remarked that there is no need to fire second shot. All the four accused / appellants stepped down from the staircase and ran towards South. Due to the fear, it is mentioned in the first information report, that in the night, family members of Shankar Lal did not dare to go to the police station. Next day morning, on 04.04.1986, at about 7:45 A.M., P.W. 1, Ramesh Lal lodged the First Information Report (Ext. A -1) of the

incident with police station, Kirti Nagar, which was registered as crime No. 42 of 1986 under Section 302 / 34 of the I.P.C. against all the four accused / appellants. A check report (Ext. A -2) was prepared by P.W. 4 Head Constable Sher Singh, of the First Information Report, lodged by Ramesh Lal. P.W. 4 Head Constable Sher Singh made necessary entry in the general diary, extract of which is Ext. A -3. P.W. 5 Vijay Singh Tyagi, Station Officer, police Station Kirti Nagar started the investigation of the crime. He went to the spot and took the dead body of Shankar Lal in his possession and prepared the inquest report (Ext. A -4). He further prepared sketch of the dead body (Ext. A -5), police form No. 13 (Ext. A -6) and letter (Ext. A -7) to the Chief Medical Officer, requesting for postmortem examination of the dead body. P.W. 5 Vijay Singh Tyagi, the Investigating Officer, also took in his possession blood stained mattress (Ext. 1), blood stained piece of sack (Ext. 2) and prepared memos Ext. A -8 and Ext. A -9, respectively. He further collected the simple soil (Ext. 3) and blood stained soil (Ext. 4), and prepared memo Ext. A -10. The Investigating Officer also prepared site plan (Ext. A -11). The Investigating Officer also took into his possession the kerosene lamp (Ext. 5) and prepared memo (Ext. A -12). He also took into his possession the torch of Bichchu Lal and prepared memo (Ext. A -13). P.W. 5 Vijay Singh Tyagi, Investigating Officer, arrested the accused persons on the same day i.e. on 04.04.1986 and recovered gun used in the crime. Thereafter, the dead body of Shankar Lal was sent for postmortem

examination. The autopsy on the dead body of the deceased was conducted by P.W. 6 Dr. S.C. Mishra on 05.04.1986, at 12:30 P.M., and postmortem examination report (Ext. A -17) was prepared. After recording the statements of the witnesses, on completing the investigation, the Investigating Officer submitted charge sheet (Ext. A -16) to the Magistrate concerned, against all the four accused persons.

4) The Magistrate concerned, on receipt of the charge sheet, it appears after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions for trial. Learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of I.P.C. against accused Bhajan Singh. The charge of offence punishable under Section 302 read with Section 34 of the I.P.C. was framed against rest of the three accused namely, Gabar Singh, Devi Singh and Ganesh Bhandari. All the four accused persons pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1, Ramesh Lal (informant and eyewitness); P.W. 2, Dinesh Lal (another eyewitness); P.W. 3, Dasi Devi (third eyewitness and widow of the deceased); P.W. 4, Head Constable Sher Singh (who prepared the check report and made necessary entry in the general diary); P.W. 5, Sub Inspector Vijay Singh Tyagi (who investigated the crime); P.W. 6, Dr. S.C. Mishra, (who conducted the autopsy on the dead body of the deceased); P.W. 7; Constable Rohtash Singh

(who took the dead body in sealed condition to the mortuary) and P.W. 8, Mahesh Narain Singh (Ballistic Expert from Forensic Science Laboratory). The entire oral and documentary evidence was put to the accused persons under Section 313 of Cr. P.C. regarding which in their reply, the accused persons alleged that evidence adduced against them is false and they have falsely been implicated in the case due to enmity. In defence D.W.1, Kewal Singh was got examined on behalf of the accused persons. The learned Sessions Judge after hearing the arguments of the prosecution and the defence, found accused Bhajan Singh guilty of the offence punishable under Section 302 of the I.P.C. and other three accused namely, Gabar Singh, Devi Singh and Ganesh Bhandari guilty of the offence punishable under Section 302 read with Section 34 of the I.P.C. and, after hearing on sentence, sentenced each of them to imprisonment for life. Against said judgment and order dated May 31, 1988, Criminal Appeal No. 1411 of 1988 was filed before the Allahabad High Court. It appears that the convict / appellant Bhajan Singh sent another Appeal through jail, which was registered as Criminal Appeal No. 940 of 1991, before the Allahabad High Court. Both the Appeals were received by transfer from Allahabad High Court to this Court under Section 35 of the U.P. Re-organization Act, 2000, for their disposal.

6) Before further discussions, it is pertinent to mention here, the ante mortem injuries found on the dead body of Shankar Lal by P.W. 6, Dr. S.C. Mishra, who conducted the autopsy on 05.04.1986, at about 12:30 P.M., in the

District Hospital Narendra Nagar, and prepared the postmortem report (Ext. A -17). The said Medical Officer found following ante mortem injury on the body of the deceased:

> ***Lacerated wound on the top of skull at the junction of frontal bone and both parietal bones size 2.5 cm X 1.5 cm, grey matter and dark fluid was coming out from the wound. Neighbouring area surrounding the wound was blackened and hairs were burnt in an area of 7 cm X 5 cm.***

On internal examination the Medical Officer found fracture of skull and cervical vertebrae 2 to 4 and 6 pellets were recovered from neck area on the right side. Parietal and temporal bones were fractured as also the occipital bone and the membranes were congested. Brain was lacerated and blood clots were present, and 3 pellets were found therein. Base of the skull was fractured and 5 pellets were recovered from there. The Medical Officer further stated that the larynx and trachea were congested. The buccal cavity was fractured along with the mandible. Both the chambers of the heart were empty. The pharynx and esophagus were also congested. About 250 gms. Of semi liquid substance was found in the stomach. The small and large intestines contained faecal matter and gases. In the opinion of the Medical Officer, who conducted the autopsy, the death of the deceased was caused on account of injury sustained on his head and brain and that the injury in question could have been caused from a firearm. The Medical Officer further opined that the injuries sustained by the victim were

sufficient in the ordinary course of nature to cause his death.

7) P.W. 1 Ramesh Lal, son of deceased Shankar Lal, is an eyewitness. He is also informant. P.W. 1 Ramesh Lal states that accused / appellants Gabar Singh, Bhajan Singh and Devi Singh are known to him as they belong to his village Bindi Ghera. Accused / appellant Ganesh Bhandari is also known to him. The witness also states that sometime before the incident, his father had a litigation over a water channel, with the accused / appellants Gabar Singh, Devi Singh and Bhajan Singh. The said case was won by his father. Since then, the accused / appellants harboured enmity with the father of this witness. P.W. 1 Ramesh Lal further states that in the intervening night of 3rd and 4th of April, 1986, at about 1:00 A.M., he was sleeping in his room, his brothers and cousins were sleeping in their rooms and his parents with his brother Prajapti were sleeping in another room. The house was a double storied house and all these witnesses were sleeping on the first floor. Suddenly, on hearing sound of footsteps, he woke up and saw towards the door. He found that accused Gabar Singh, Bhajan Singh, armed with guns, along with accused Devi Singh and Ganesh Bhandari stepping up towards the room of Shankar Lal. Devi Singh was having a torch with him. He and Ganesh Bhandari asked the rest of the two accused to kill Shankar Lal, as he gets too much involved in the litigation. On this, accused Bhajan Singh fired at Shankar Lal on his head. Shankar Lal died on the spot. Then, accused Gabar

Singh remarked 'मर गया है, दूसरी गोली की जरूरत नही है' (he is dead, there is no need to fire second shot). Thereafter, according to this witness, all the accused persons stepped down through the staircase. P.W. 1 Ramesh Lal further states that accused Ganesh Bhandari is brother-in-law of accused Devi Singh. The witness further states that his uncle Bichchu Lal, his elder brother Dinesh Lal (P.W. 2) also saw accused persons killing Shankar Lal in the light of the torch, which they were possessing at the time of incident. Apart from this, according to this witness (P.W. 1), a kerosene lamp was burning in the room of Shankar Lal and the doors were open, P.W. 1 Ramesh Lal states that in the next morning. he lodged the First Information Reprot (Ext. A -1) with the Police. In the cross examination, the witness has stated that the distance of police station is nine kilometer from his village. P.W. 1 Ramesh Lal further states that he and Dinesh Lal (P.W. 2) were busy with the preparation of their exams. The witness further states that the lamp was not put of for the reason that there were bed bugs in the room. The doors were open as it was Summer time.

8) P.W. 2 Dinesh Lal is another eyewitness of the incident. He also is son of deceased Shankar Lal. According to this witness, in the intervening night of 3rd and 4th of April, 1986, at about 1:00 A.M., when he was sleeping in his room and other family members were sleeping in their rooms. He woke up due to the sound of footsteps and saw towards the door that all the four accused persons were stepping up towards the room of his

father. The witness further states that accused Gabar Singh and Bhajan Singh were armed with guns and accused Devi Singh was having a torch with him. P.W. 1 Dinesh Lal also states that it was accused Devi Singh and Ganesh Bhandari, who exhorted rest of the two accused to kill Shankar Lal. By then, according to this witness, almost whole of the family has woken up. The witness further states that accused Bhajan Singh fired at his father, which hit him on his head. Consequently, Shankar Lal died on the spot. P.W. 2 Dinesh Lal also corroborates the fact that there was a kerosene lamp in the room of Shankar Lal. The witness further states that he had a torch with him in which he could recognize all the four accused persons. P.W. 2 Dinesh Lal has clarified that in the neighbourhood there was no other house. The witness lastly in his examination-in-chief says that the accused persons had enmity with his father. In the cross examination, the witness says that he was busy with his exams during the days when the incident took place. He has further clarified in the cross examination that the doors were open at the time of the incident.

9) P.W. 3 Smt. Dasi Devi, is widow of the deceased and is also an important eyewitness. According to her, she was in the same room in which Shankar Lal was sleeping, on the day of incident. This witness has corroborated entire prosecution, story, as narrated by above two witnesses namely P.W. 1 Ramesh Lal and P.W. 2 Dinesh Lal. It is not necessary to repeat the entire prosecution story here again, but the presence and narration made by this lady is most natural and

trustworthy. She has not only supported the prosecution story as to the commission of murder by the accused persons, in the manner stated above, but also the factum that the lamp was burning at the time of the incident and the accused persons had enmity with Shankar Lal due to litigations between them.

10) P.W. 4 Head Constable Sher Singh has corroborated the statement of P.W. 1 Ramesh Lal on the point of lodging the First Information Report. According to this witness, he prepared check report (Ext. A -2) on the basis of First Information Report (Ext. A -1) on 04.04.1986, at about 7:45 A.M. The witness further states that he made necessary entry in the general diary, extract of which is Ext. A -3 P.W. 5 Vijay Singh Tyagi, the Investigating Officer, has stated that on 04.04.1986, he started the investigation and took the dead body of Shankar Lal in his possession and prepared inquest report (Ext. A -4), and other necessary papers viz. sketch of dead body, police form No. 13, letter to the Chief Medical Officer (Ext. A -5 to A -7). The witness further states that he took in his possession blood stained mattress (Ext. 1) and blood stained peace of sack (Ext. 2) and prepared memos Ext. (A -8) and Ext. A -9). P.W. 5 Vijay Singh Tyagi, the Investigating Officer, further states that he took simple soil and blood stained soil (Ext. 3 and Ext. 4) in his possession from the spot and prepared the memo (Ext. A -10). He further states that he prepared site plan (Ext. A -11), took the kerosene lamp (Ext. 5) and prepared memo (Ext. A -12). The witness (P.W. 5) further states that torches of Dinesh Lal and Bichchu Lal were also

taken into possession and memo (Ext. A -13) was prepared. According to this witness, on the very day, accused persons were arrested and guns were also recovered.

11) P.W. 6 Dr. S.C. Mishra, who conducted the autopsy on the dead body of the deceased, has proved postmortem examination report (Ext. A -17) and corroborated the prosecution story that the deceased had died on account of firearm injury. P.W. 7 Constable Rohtash Singh has stated that the dead body, after the inquest report was prepared, was taken by him in sealed condition to the mortuary for the postmortem examination.

12) From the above discussion and evidence on record, we are of the view that the prosecution has been successful in proving the charge of commission of murder of Shankar Lal against accused / appellant Bhajan Singh and the charge of offence punishable under Section 302 read with Section 34 of the I.P.C. as against the accused / appellants Gabar Singh, Devi Singh and Ganesh Bhandari, for it has been established that they had common intention in the midnight with accused / appellant Bhajan Singh to commit murder of Shankar Lal. In the defence D.W. 1 Kewal Singh has been examined. He has disputed the prosecution story as to the manner in which the accused were arrested and the guns were recovered. However, assuming for a moment that this witness is believable, since he is not an eyewitness of commission of murder therefore, as far as the ocular version of the prosecution witnesses, particularly, that of P.W. 1 Ramesh Lal, P.W. 2

Dinesh Lal and P.W. 3 Dasi Devi, does not get shaken by the evidence of D.W. 1 Kewal Singh.

13) On behalf of the appellants, it is argued that in the site plan, the Investigating Officer has not shown the place from where the witnesses have witnessed the incident. In our opinion, the argument has no force for the reason that P.W. 3 Dasi Devi is in the same room where Shankar Lal was sleeping and P.W. 1 Ramesh Lal and P.W. 2 Dinesh Lal were also in the same house in the adjacent rooms. As such, the error on the part of the Investigating Officer does not create any reasonable doubt in the prosecution story.

14) Mr. Lokendra Dobhal learned counsel of the appellants contended that in the connected Sessions Trial in respect of the offence punishable under Section 25 of the Arms Act, 1959, the trial court has not believed the prosecution story and the trial court committed error of law in convicting the accused persons believing the prosecution story in this case. We do not see substance in the contention advanced on behalf of the appellants, on the ground that recovery of firearm or the cartridges is a different incident from the incident of commission of murder. Even after disbelieving the manner of recovery of the arms, the ocular evidence of the eyewitnesses regarding commission of murder is so natural and trustworthy, that it does not get shaken.

15) It is also submitted on behalf of the appellants that it is hard to believe that the doors of the house of the deceased were kept open at night also. We see little force in the submission made on behalf of the appellants, as the

sufficient reason for keeping the doors open during night has come in the evidence adduced by the eye witnesses namely P.W. 1 Ramesh Lal and P.W. 2 Dinesh Lal that it was Summer time, when the incident took place, and in order to feel the cool breeze, they used to keep the doors of their house open at night also.

16) For the reasons, as discussed above, we do not see any ground to interfere with the impugned judgment and order, passed by the trail court. The conviction and sentence awarded against each of the accused / appellants namely Bhajan Singh, Gabar Singh, Devi Singh and Ganesh Bhandari is maintained. Accordingly, both the appeals are dismissed. The accused / appellants are on bail. Their bail is cancelled. They shall be taken into custody forthwith by the court concerned to make them serve out the sentence.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. July 15, 2006.
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